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U.S. Department of Homeland Security  
Citizenship and Immigration Service

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investigation

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street NW  
Washington, DC 20536

FILE: [REDACTED] Office: TEXAS SERVICE CENTER

Date: SEP 30 2003

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

**PUBLIC COPY**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

*Cindy M. Gomey for*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director of the Texas Service Center and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4) in order to employ her as the "Director of Family Emergency Transitional Shelter" for the Korean Community Center established by the Salvation Army.

The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for the two years immediately preceding the filing date of the petition. The director also found that the petitioner had not established that the beneficiary was qualified as a religious worker.

On appeal, the petitioner submits a statement.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the

religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

Pursuant to 8 C.F.R. § 204.5(m)(1):

Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 at the request of the organization. All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The first issue raised by the director is whether the petitioner has established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for the two years immediately preceding the filing date of the petition.

On appeal, the petitioner states that the beneficiary has experience in the offered position in Korea. The petitioner explains that it is not possible to provide any evidence that the beneficiary's work experience in Korea was paid work, because volunteers are not paid by the Salvation Army in Korea.

Pursuant to 8 C.F.R. § 204.5(m)(1):

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on March 1, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing services as a religious worker from March 1, 1999 to March 1, 2001.

The record shows that the beneficiary entered the United States as a nonimmigrant B-2 visitor on July 23, 1997 with stay authorized to January 27, 1998. Her authorized stay was subsequently extended until August 15, 1998. The beneficiary has remained in the United States in unlawful status since that date. The petitioner states that the beneficiary has served as Director of Family Emergency Transitional Shelter and Sunday School Teacher on a full-time, voluntary basis since September 1997.

The legislative history of the religious worker provision of the Immigration Act of 1990 reflects that a substantial amount of case law has developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision. See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he or she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals (BIA) determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he or she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963); *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he or she is engaged in other secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation, who, in accordance with their vocation, live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To find otherwise would be outside the intent of Congress.

In this case, the petitioner has specifically stated that the beneficiary served as Director of Family Emergency Transitional Shelter and Sunday School Teacher on a full-time, **voluntary** basis since September 1997. This work experience does not constitute qualifying religious experience since the beneficiary's work was not salaried.

On appeal, the petitioner states that the beneficiary has experience as a religious worker in Korea, but is unable to provide evidence of having received a salary for her work because the church's workers in Korea are not paid for their work. This statement is not relevant to the issue at question in this proceeding, because the beneficiary worked for the petitioner in the United States during the two-year period immediately preceding the filing date of the petition.

The second issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary is qualified as a religious worker.

The director stated that the petitioner had not provided any evidence to establish that the beneficiary had received any form of religious training to qualify her for the position.

On appeal, the petitioner submits a letter dated December 30, 2002 from Major Eung-Ho Lee, Commanding Officer of the Hap-Jung Corps and Welfare Center in South Korea. Major Lee states that the beneficiary "received much training" in liturgical work and religious counseling, drug and alcohol prevention, Biblical Studies and Christian Education, and Christ-centered social services in the period from July 1993 to July 1995. Major Lee further states that, after her ordination as a local officer in the Shelter/Transition Home program, the beneficiary received additional training in intensive case management and housing support services for clients diagnosed with special needs such as HIV/AIDS, substance abuse, and mentally and physically challenged individuals. Major Lee did not, however, provide any information regarding the nature or duration of this training, nor did he provide any independent evidence to document such training. Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner has not submitted sufficient evidence to establish that the beneficiary is qualified as a religious worker, and the petition must be denied for this reason as well.

Beyond the director's decision, the petitioner has not established that the offered position qualifies as a religious occupation. The majority of the beneficiary's duties appear to be secular in nature. As the petition will be dismissed on the grounds discussed above, however, this issue need not be discussed further.

In reviewing an immigrant visa petition, the AAO must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.